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 9 Wells Fargo Bank, N.A.
 10 11-71070

11 **UNITED STATES BANKRUPTCY COURT**
 12 **DISTRICT OF NEVADA**

13 In Re:	BK Case No.: 11-18889-mkn
14 Artemio Avila	Chapter 13
15 Debtor.	

16 **EX-PARTE APPLICATION FOR AN ORDER**
 17 **PURSUANT TO 362(4)(A)(i) and (ii)**

18
 19 Wells Fargo Bank, N.A., Secured Creditor herein, ("Secured Creditor" or "Movant"
 20 hereinafter), requests from this Court an Order Confirming that the Automatic Stay of 11 U.S.C § 362
 21 has not arisen with respect to the Debtor due to the multiple filings as evidenced below. This motion is
 22 supported by the following Memorandum of Points and Authorities.

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 1. That on or about June 6, 2011, the above named Debtor filed this instant Chapter 13
 25 Petition in Bankruptcy with the Court

26 2. Secured Creditor is the current payee of a promissory note dated February 25, 2008 in
 27 the principal sum of \$174,166.00 ("Promissory Note" herein), secured by Deed of Trust of
 28 same date upon property generally described as 3980 Timberlake Dr., Las Vegas, NV 89115, and
 29 legally described as follows:

LOT ONE HUNDRED SEVENTY (170) IN BLOCK TEN (10) OF WALNUT GROVE UNIT 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 92 OF PLATS, PAGE 9, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

(“subject property” herein).

3. Secured Creditor is informed and believes, and, based upon such information and belief, alleges that title to the subject property is currently vested in the name of Debtor and that the Debtor is in default of the loan obligations.

4. Prior to filing this case, the Debtor filed additional cases within a one year period as follows:

(a) Case No. 10-32157, filed November 24, 2010 in the District of Nevada, which was Dismissed on January 21, 2011.

(b) Case No. 11-12465, filed February 24, 2011 in the District of Nevada, which was Dismissed on May 4, 2011.

5. Secured Creditor requests that the Court enter an Order confirming that there is no Automatic Stay affecting Secured Creditor with respect to the Debtor.

6. Bankruptcy Code Section 362 (4)(A)(i) and (ii) states as follows:

If a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case re-filed under section 707 (b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and
(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect; (*emphasis added.*)

7. In addition, there is no stay as to the estate and/or trustee. See In re Reswick, 446 B.R. 362 (9th Cir. BAP 2011).

8. As stated above, Debtor was a Debtor in two (2) prior or more cases pending within a preceding one year period of time prior to the institution of the present case, and that those prior cases were dismissed.

9. Secured Creditor respectfully requests an order from the Court confirming that the Automatic Stay never arose as to Secured Creditor, and that Secured Creditor may proceed with executing upon its security interest in the subject property described herein.

WHEREFORE, for all of the foregoing reasons, Secured Creditor, Wells Fargo Bank, N.A., requests the Court to enter an Order confirming that the Automatic Stay has never arisen, with respect to the Debtor and the subject property described in this motion.

Respectfully submitted, this _____ day of _____ 2011.

TIFFANY & BOSCO, P.A.

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 9 **UNITED STATES BANKRUPTCY COURT**
 10 **DISTRICT OF NEVADA**

In Re:	Bk Case No.: 11-18889-mkn
Artemio Avila	Chapter 13
Debtor.	

11
 12 **CERTIFICATE OF SERVICE OF EX-PARTE**
 13 **APPLICATION FOR AN ORDER PURSUANT TO 362(4)(A)(i) and (ii)**

14 1. On 6/14/11 I served the following documents(s):

15 *NOTICE AND MOTION FOR RELIEF FROM AUTOMATIC STAY*

16 2. I served the above-named document(s) by the following means to the persons as listed below:

17 a. ECF System

18
 19 Rick A. Yarnall
 ecfmail@lasvegas13.com
 20 Trustee

1 **X b. United States mail, postage fully prepaid:**

2
3 Artemio Avila
4 3980 Timberlake Dr.
5 Las Vegas, NV 89115
6 Debtor

7 **□ c. Personal Service (List persons and addresses. Attach additional paper if necessary)**

8 I personally delivered the document(s) to the persons at these addresses:

9 **□ 1.** For a party represented by an attorney, delivery was made by handing the
10 document(s) to the attorney's office with a clerk or other person in charge, or if no one is charge by
11 leaving the document(s) in a conspicuous place in the office.

12 N/A

13 **□ 2.** For a party, delivery was made by handing the document(s) to the party or
14 by leaving the document(s) at the person's dwelling house or usual place of abode with someone of
15 suitable age and discretion residing there. N/A

16 **□ d. By direct mail**

17 Based upon the written assignment of the parties to accept service by email or a court order. I
18 caused the document(s) to be sent to the persons at the mail addresses listed below. I did not receive,
19 within a reasonable time after the transmission, any electronic message or other indication that the
20 transmission was unsuccessful.

21 **□ e. By fax transmission**

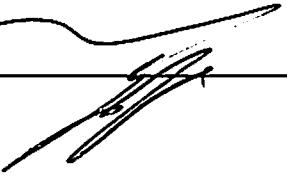
22 Based upon the written assignment of the parties to accept service by fax transmission or a court
23 order. I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by
24 the fax machine that I used. A copy of the record of the fax transmission is attached.

25 **□ f. By messenger**

26 I served the document(s) by placing them in an envelope or package addressed to the persons at
the addresses listed below and providing them to a messenger for service.

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2 I declare under penalty of perjury that the foregoing is true and correct.
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4 DATED this 14th day of June 2011.
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6 By: 
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